ANNUAL REPORT OF THE COMMITTEE TO MAKE A STUDY OF PUBLIC AND PRIVATE SERVICES, PROGRAMS AND FACILITIES FOR THE AGING IN SOUTH CAROLINA

APRIL, 1977

ANNUAL REPORT

OF THE COMMITTEE

TO MAKE A STUDY OF

PUBLIC AND PRIVATE SERVICES,

PROGRAMS AND FACILITIES

FOR THE AGING IN

SOUTH CAROLINA

APRIL, 1977

DEDICATED TO

FORMER STATE SENATOR RICHARD W. RILEY

IN RECOGNITION OF HIS OUTSTANDING LEADERSHIP

AS CHAIRMAN OF THE

JOINT STUDY COMMITTEE ON AGING

FROM 1969-1976

Annual Report
of
The Committee to Make A Study of Public and Private Services, Programs and Facilities for the Aging in South Carolina

April, 1977

Transmittal Letter

To: The Honorable James B. Edwards, Governor of South Carolina and Members of the General Assembly of South Carolina:

The Joint Legislative Study Committee on Aging, created by Concurrent Resolution 1286 on June 17, 1969, held a six-hour public hearing on December 2, 1976 to receive testimony concerning problems of older South Carolinians. Several follow-up meetings were held by the Committee to investigate and study the testimony rereceived at this hearing. All matters brought before the Committee were discussed at these follow-up meetings and appropriate action was recommended. The following is a summary of the Committee's findings.

Continued feelings of injustice suffered by teachers and State employees who retired prior to July 1, 1972 were again brought before the Committee. On July 1, 1972, the retirement income formula was changed to effect increased benefits for those who retired after that date. However, no change in the contribution rate was made at that time. Although the General Assembly increased benefits for this group of retirees during the 1974 and 1976 sessions, an additional five percent increase in benefits was requested in order to equalize benefits for all retirees. The Committee feels that this five percent increase should be granted during the 1977 legislative session. Such action would end several years of discontent on the part of those teachers and State employees who retired prior to the effective date of the new formula. The Committee recommends that future changes in the retirement formula, with no change in the contribution rate, should be applied equally to those who have retired from State service as well as active employees.

Other legislative recommendations include legalization of the so-called "living will" concept, broadening of powers of attorney to allow optional extension into a state of mental incompetency, estab-

lishment of an Interagency Council on Transportation, addition of two consumer representatives on the Hearing Aid Dealers and Fitters Commission, allowance of State reimbursement of municipal homestead tax exemption, broadening of the homestead exemption as it applies to a surviving spouse, expanded educational opportunities for older citizens and continuation of the work of the Joint Study Committee on Aging.

General recommendations include support for the following: (1) Expansion of programs of the South Carolina Commission on Aging; (2) High priority for construction of the 300-bed intermediate care facility authorized by the 1975 General Assembly; (3) Continuation of cost-of-living increases for retirees; (4) Additional funding for residential care facilities; (5) Increased allocations of Federal Revenue Sharing Funds for programs for older citizens; and (6) Establishment of pre-retirement educational programs. The Committee also recommends a review of the co-payment drug policy instituted by the Department of Social Services in January.

The Committee is continuing to study the medical assistance for the elderly program in South Carolina. A desperate situation exists for many middle income elderly people and their families due to their inability to afford long-term care. The Medicaid "cap" in South Carolina is one of the lowest in the nation. If an elderly person in South Carolina receives income of more than $335 per month, he or she is ineligible for medical assistance. There are many older South Carolinians who can meet expenses of daily living, but in the event of serious long-term illness or institutionalization cannot afford the cost of adequate health care. The Committee has requested information from several state, regional and national sources to attempt to find an alternative plan for medical assistance so that adequate health care can be made available to the middle income elderly citizens who at present are suffering from an inability to afford needed health care.

The Committee feels that the issue of the effect of rising homestead taxes on our older citizens must be addressed on the State level. Reassessment programs have reduced the benefit of the homestead tax exemption and many of our older citizens are finding themselves burdened with increased homestead taxes while having to live on a fixed income. One form of relief would be the funding of the municipal homestead tax exemption as called for in legislation filed by the Committee.

These recommendations and others are outlined in more detail in the Report.

The Committee would like to recognize the continuing concern for the aging demonstrated by the legislative and executive branches of our State government. A summary of legislation passed since 1970 to benefit older South Carolinians is attached to this Report as a tribute to this concern.

The Committee would also like to proudly recognize and congratulate its Vice-Chairman, Representative Patrick B. Harris, on being the recipient of the 1977 Exemplary Service Award presented by the National Council on Aging. Representative Harris has been an active and dedicated member of the Joint Legislative Study Committee on Aging since its inception in 1969.

Respectfully submitted,

/s/ HYMAN RUBIN,
Senator, Chairman

/s/ PATRICK B. HARRIS,
Representative, Vice-Chairman

/s/ GEORGE E. CARLTON,
Secretary,
Gubernatorial Appointee

/s/ T. DEWEY WISE,
Senator

/s/ JOHN H. WALLER, JR.,
Senator

/s/ EUGENE S. BLEASE,
Representative

/s/ H. PARKER EVATT,
Representative

/s/ JAMES E. ALEWINE (REV.),
Gubernatorial Appointee

/s/ JUNE B. FURMAN (MRS.),
Gubernatorial Appointee

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LEGISLATIVE RECOMMENDATION 1

Increase in Retirement Benefits for State Employees and Teachers Who Retired Prior to July 1, 1972.

On July 1, 1972, the retirement income formula was changed to effect increased benefits for those who retired after that date. However, no change in the contribution rate was made at that time.

During the past several years, the Committee on Aging has received testimony in public hearings and otherwise from teachers and

State employees who retired prior to July 1, 1972. This testimony has reflected a continuing feeling of discontent on the part of these retirees who feel that the new formula should have been applied to all retirees. It has been the contention of these retired teachers and State employees that the new formula increased retirement income benefits by approximately twenty percent (20%) for those who retired after July 1, 1972. The General Assembly has shown empathy with the concerns of these retired teachers and State employees, and during the 1974 and 1976 legislative sessions granted increases which have resulted in a total increase of fifteen percent (15%).

The Committee on Aging, giving its continued support for these increases, filed companion bills (S. 224 and H. 2477) to grant the additional five percent (5%) which these retirees feel will result in an equitable distribution of retirement benefits. The cost was estimated to be approximately $1,250,000 annually, affecting over 9,000 retirees. It was the position of the Retirement System, as in past years, that any increase in retirement benefits would have to come from a general appropriation.

During the Senate deliberations on the Appropriations Bill for 1977-78, the Committee was able to include a five percent (5%) increase for these retirees beginning on January 1, 1978, resulting in a reduced cost of approximately $600,000 for 1977-78.

This five percent (5%) increase in retirement benefits will equalize benefits for all retirees, ending several years of discontent and feelings of injustice on the part of those retirees who retired prior to the effective date of the new formula. It is the feeling of the Committee on Aging that future changes in the retirement formula, with no change in the contribution rate, should be applied equally to those who have retired from State service as well as active employees.

Legislative Recommendation 2

Provision for an authorization of an adult to make a written Directive instructing his physician to withhold or withdraw life-sustaining procedures in the event of a terminal condition.

Legislation was introduced by the Committee (S. 197 and H. 2419) which would authorize an adult to make a written directive to his physician to withhold or withdraw life-sustaining procedures in the event of a terminal condition. This legislation was modeled after the California Natural Death Act which was enacted by the California General Assembly in 1976. Senate Bill 197 was modified by the Sen-

ate Medical Affairs Committee working in conjunction with interested parties and this amended version has been passed by the Senate and sent to the House. It is the feeling of the Committee on Aging that this amended version is well drafted and contains many safeguards for the patient and the physicians and medical assistants involved in carrying out the directive. Senate Bill 197, as amended, is attached as Appendix A.

Legislative Recommendation 3

Extension of powers of attorney into state of mental incompetency if such action is desired by the principal.

Legislation was introduced by the Committee (S. 155 and H. 2330) to provide that powers of attorney shall not be terminated by the physical disability or mental incompetency of the principal if the principal has so designated such desire in writing. The Senate Judiciary Committee has proposed amendments to the original bill which would establish the relationship between the power of attorney and the principal as a fiduciary relationship thus providing for fiscal responsibility and accountability on the part of the person serving as the power of attorney. The amended bill also terminates the power of attorney on the appointment of a Committee. The amended version is attached as Appendix B.

Legislative Recommendation 4

Establishment of an interagency council on transportation.

Transportation continues to be a major problem of South Carolina's older citizens. Lack of funds and/or physical disability frequently make it impossible for many older persons to own or drive their own automobiles. More often than not, an individual in this situation finds it difficult to reach the places he needs to go—the grocery store, health services, social agencies, educational or recreational opportunities, church or other destinations.

Progress has been made in some locations, with establishment of mini-bus service or similar portal-to-portal transportation by Aging organizations and other agencies, but much remains to be accomplished.

There continues to be a great need for coordination of transportation services among State agencies. The Committee believes the recommendation of the Study Committee on Transportation to create an Interagency Council on Transportation is a sound approach to achieve

this needed coordination. Legislation has been filed (S. 296 and H. 2604) to create this Interagency Council and it has the full support of the Committee on Aging.

Legislative Recommendation 5

Need for consumer representation on the Hearing Aid Dealers and Fitters Commission.

The Committee has filed legislation (S. 237 and H. 2511) calling for the expansion of the Hearing Aid Dealers and Fitters Commission to include two representatives of the general public who are unrelated to a hearing aid dealer or manufacturer. The Commission operates within the Department of Health and Environmental Control and was established to "guide, advise and make recommendations" to the Board of the Department of Health and Environmental Control, which is the governing body responsible for the regulation of the hearing aid industry.

Legislative Recommendation 6

Allowance of state reimbursement to municipalities to fund the cost of granting the municipal homestead tax exemption.

The Committee introduced legislation (S. 235 and H. 2468) to allow the State to reimburse municipalities for the cost of granting the municipal homestead tax exemption. During the 1976 session of the General Assembly, legislation was passed to allow the municipalities to grant this exemption. However, most municipalities have taken the position that they want to grant the exemption but cannot afford the cost involved. It has been estimated that the cost to the State would be approximately $1,750,000 annually.

Legislative Recommendation 7

Broadening of homestead exemption as it relates to a surviving spouse.

The Committee introduced legislation (S. 26 and H. 2063) to provide that when any person who was entitled to a homestead tax exemption dies and the surviving spouse is at least 50 years of age, the surviving spouse shall be eligible for the continuance of the homestead tax exemption. The Committee's bill was amended during the legislative process to raise the age of eligibility to age 57.

This legislation passed the General Assembly and has been signed by the Governor. The ratification number is R-67.

LEGISLATIVE RECOMMENDATION 8

Expansion of educational opportunities for older citizens.

Legislation will be filed shortly to reduce the eligible age from 65 to 60 for those older citizens interested in taking advantage of the free tuition program at the State's universities, colleges and TEC schools. Persons employed on a full-time basis would not be eligible for this program. (Admittance is allowed on a space-available basis.)

Retirement has now been made available to many older citizens at an earlier age. It is the desire of the Committee to make this resource available to retired people 60 years of age or over.

LEGISLATIVE RECOMMENDATION 9

Continuance of the committee to make a study of public and private services, programs and facilities for the aging in South Carolina, and of laws pertaining thereto.

Senate Bill 200 was introduced to continue the study of the Committee on Aging and it has been adopted by both the House and the Senate. This legislation authorizes the Committee on Aging to continue its study during the 1978 session of the General Assembly.

GENERAL RECOMMENDATION 1

Support for the South Carolina Commission on Aging.

The Committee notes that the South Carolina Commission on Aging has worked successfully for the past eleven years to improve the quality of life for older South Carolinians. The Commission has become recognized as a leader among state programs of a similar nature, and its innovative approaches have often served as a model for other states.

The manner in which the Commission has carried out its tasks is commendable and the need for service to the aging continues to grow with the increased proportion of elderly in our state's population.

Because of these reasons, and because growing services require a commensurate increase in State administrative responsibilities, the Committee recommends that funding requests of the Commission be met insofar as feasible considering the financial resources of the State.

The Committee makes particular note of an appropriation of $250,000 first made in 1974 (later reduced to $238,000) which has been distributed in equal shares to each of the State's ten planning regions.

These funds have been used by County Councils on Aging and other organizations which provide direct services to the elderly at the local level, primarily to match Federal dollars available to establish programs for the elderly, such as Title XX, thus multiplying the effectiveness of the State appropriation.

Since 35% of our State's people aged 65 or older have incomes below the poverty level, and need help with transportation, living arrangements, and meals, need activities to prevent their becoming isolated and lonely, and need assistance in other ways to remain independent and to remain in their own homes rather than being institutionalized, substantial increases in money are needed.

The Committee recognizes the need to increase this portion of the Commission on Aging's appropriation in a significant manner when improved State finances will permit.

General Recommendation 2

Support for a high priority status for the construction of the 300-bed intermediate care facility for the mentally ill elderly.

In 1975, the General Assembly authorized a bond issue of $6,000,-000 for the purpose of establishing an intermediate care facility for the mentally ill elderly to relieve the overcrowding at Crafts-Farrow. The establishment of this facility would provide urgently needed care.

The Committee has recommended to the House-Senate Bond Review Committee that a high priority be assigned to the construction of this facility.

General Recommendation 3

Support for the continuation of cost-of-living increases for retirees.

The Committee has voted its support for the continuation of the cost-of-living increases for retired teachers and State employees. It has been advised by the Director of the South Carolina Retirement System that he will keep the Committee informed on the status of the cost-of-living increases.

General Recommendation 4

Need for a review of the co-payment of drugs policy instituted by the Department of Social Services.

A recently implemented policy of the Department of Social Services requires elderly recipients of Medicaid funding to pay 50c on each

prescription. The Committee heard testimony from the Department of Social Services regarding the financial necessity for the implementation of this co-payment policy. It was estimated that the savings to the State would be approximately $320,500. At that time, the Committee expressed its concern regarding the new policy and how it would affect those elderly Medicaid recipients who receive only $15 to $25 per month from which to make payments for the co-payment program and from which they must make payments for other expenses for personal needs.

The Committee on Aging has been advised that the Medicaid Medical Care Advisory Committee's Policies and Operations Subcommittee has evaluated the concerns brought forth by the Committee on Aging and has voted to observe the co-payment program for a six-month period. At the end of the six months, it is to be reviewed with input from actual operational data. The Committee supports the review of this co-payment policy by this Advisory Committee of the Department of Social Services.

General Recommendation 5

Support of additional funding for residential care facilities.

The Committee recognizes that residential care facilities, such as boarding homes, are viable alternatives to institutionalization for many older citizens. The upgrading of these facilities and the services which they perform is a worthy goal and the Committee on Aging is supportive of efforts to provide additional funding for this purpose.

General Recommendation 6

Support for increased allocation of Federal Revenue Sharing Funds for programs for older citizens.

The Committee on Aging feels that increased allocations of Federal Revenue Sharing Funds should be assigned to programs which benefit older citizens.

General Recommendation 7

Encouragement of pre-retirement educational programs.

The Committee has previously supported the concept of a statewide system of pre-retirement education for State employees and reiterates this position. The Committee feels that pre-retirement educa-

tion programs can be of substantial benefit. Such programs can better prepare workers for a healthy and happy retirement, through training in personal financial management, how to use and enjoy leisure time and the development of a positive attitude toward retirement living.

The South Carolina Commission on Aging has for several years encouraged development of pre-retirement programs in State government and private industry. Several State agencies are beginning such programs for their own employees.

The Committee recommends that a coordinated effort be made to establish a program of this type for all persons in State government.

GENERAL RECOMMENDATION 8

Support for an educational program to advise citizens 65 years of age or older of their right to serve on a jury and their additional right to be excused from jury service, if desired.

The Committee recommends that an educational program be conducted by the Commission on Aging to advise older citizens 65 years of age or older of their right to serve on a jury if they so desire and their additional right to be automatically excused from jury service by reason of age.

GENERAL RECOMMENDATION 9

Encouragement of part-time employment opportunities for older citizens.

The Committee on Aging has written to the Manpower Division of the Governor's Office and the South Carolina Chamber of Commerce encouraging the employment of older citizens on a part-time basis.

The Manpower Division informed the Committee that it creates public sector jobs through funds provided by the Comprehensive Employment Training Act (CETA) and that one of the segments of the population specifically identified by the CETA legislation as in particular need is older workers. The Division stated that the Area Manpower Planning Boards and the State Manpower Services Council have emphasized consideration of older workers for CETA jobs and will continue to encourage this consideration.

The South Carolina Chamber of Commerce indicated that they plan to encourage the employment of older citizens on a part-time basis and will include this as one of the topics to be discussed at workshops sponsored by the Chamber.

The Committee on Aging encourages and commends efforts to expand part-time employment opportunities for older citizens and hopes that organizations, agencies and individuals involved in such programs will keep the Committee informed of their progress.

GENERAL RECOMMENDATION 10

Improvement of voting procedures for older citizens.

It has been brought to the attention of the Committee that some of our older citizens do not participate in the voting process because they are unable to endure an extended wait in voting lines.

The Committee on Aging has been in contact with the State Election Commission regarding this matter. It has been learned that the new absentee voting procedures are relatively simple and that no medical statement is needed to vote absentee because of physical inability to vote in the regular manner. The State Election Commission also plans to make every effort through their training program to communicate to local election officials the need to streamline voting and cut down on the time a voter must wait in line.

The Committee on Aging recommends that the Commission on Aging make every effort to educate older citizens and organizations which work with older citizens as to the various voting methods available.

GENERAL RECOMMENDATION 11

Support of the Home Health Care Program and the Hypertension Screening and Treatment Program of the Department of Health and Environmental Control.

Home Health Care—Home health care services are a cost-effective and humane ingredient in the provision of care, allowing for alternative and appropriate care, and at the same time, releasing valuable institutional resources to treat patients with more complex health care requirements. Home health care has been defined as "the provision of health care to persons confined to their place of residence because of illness or injury, on an intermittent basis by trained health professionals, working under the direction of the attending physician." These services include skilled nursing, home health aid, physical therapy, speech therapy, occupational therapy and medical social services. Needed medical supplies and durable medical appliances are also provided. Home health care is effective, efficient and economical and it plays a highly significant role in an overall program to allow our older citizens to remain in the community.

A new aspect within the home health care services is the provision of home health services on a sliding income scale, thus making these services available to older citizens above the proverty income level. The Committee is very supportive of this extension of the home health care program.

Hypertension Screening and Treatment—In 1974, the Department of Health and Environmental Control established a network of Hypertension Screening and Treatment Clinics throughout the State, to detect and treat hypertension. South Carolina is a pioneer in this field and has attracted national attention for its efforts.

Hypertension, or high blood pressure, is the largest contributing cause of death in the United States today. This condition, often symptomless, occurs more than twice as often among people 65 to 80 years of age than in the population as a whole.

The Committee on Aging feels that these programs within the Department of Health and Environmental Control deserve strong support and expansion to the extent that funds can be made available.

GENERAL RECOMMENDATION 12

Support of the Homemaker Services Programs of the Department of Social Services and the Department of Health and Environmental Control.

Provision of homemaker services has been a highly successful program within the Department of Social Services and the Department of Health and Environmental Control. These services range from house cleaning and grocery shopping to teaching the elderly an easier way to handle chores. In addition to the practical duties, the homemaker fulfills the emotional need of having someone to talk to who takes an interest in their needs. This program exemplifies another valuable service to the elderly.

The Committee feels that the provision of homemaker services to the elderly is yet another step in the direction of preventing institutionalization. It recommends full support and expansion of these services as funds become available.

GENERAL RECOMMENDATION 13

Support of the Adult Day Care Program.

Adult day care centers provide an alternate source of care for older citizens who live with relatives or friends. These centers provide a safe and interesting place for an older person to spend the day.

The Committee on Aging continues to be supportive of the adult day care center program and urges allocation of additional Title XX funding to improve this program.

STATEMENT 1

Provision of health care assistance to middle-income elderly.

As outlined in the transmittal letter, one of the most critical problems that must be dealt with on the State level is the need for health care assistance to middle-income elderly South Carolinians. The Committee on Aging is extremely concerned about this problem and it is in the process of attempting to compile information in the hope that a solution can be found. Information has been requested from the United States Department of Health, Education and Welfare, the Southeast Institute for Resource Development, Inc., the South Carolina Department of Social Services and the United States House Select Committee on Aging. In addition, the Social Problems Research Institute at the University of South Carolina has volunteered to conduct a study of how other states are attempting to deal with the provision of health care services to indigent and middle income elderly citizens.

The Committee on Aging will continue to be involved in the search for a solution which will bring about relief for the middle income elderly citizens of South Carolina.

STATEMENT 2

Provision of additional Homestead Tax relief for older citizens.

Reassessment of homestead property resulting in higher taxes for older citizens continues to be of concern to the Committee. Several measures to alleviate this tax burden on our older citizens are presently being studied by the Committee.

STATEMENT 3

Rental Tax relief for older citizens.

Many of South Carolina's older citizens are not presently receiving housing tax relief because they live in rented quarters. The Committee is studying several rental tax relief plans and will recommend a tax relief plan at such time as the State's economic situation is improved.

STATEMENT 4

Utility rate assistance for older citizens.

The Committee is cognizant of the burden placed upon our older citizens, most of whom live on fixed incomes, by the rising utility costs. Possible measures of relief will be studied by the Committee on Aging during the coming year.

STATEMENT 5

Multi-Service Senior Centers.

The Committee on Aging will be looking into laws establishing Multi-Service Senior Centers where older citizens are provided with medical, social, supportive, and rehabilitative services in a centralized and comprehensive fashion.

STATEMENT 6

Generic substitution of drugs.

Many states have passed laws allowing the generic substitution of drugs. The Committee on Aging plans to study generic substitution during the coming year.

APPENDIX "A"

Calendar No. S. 197

Introduced by SENATORS RUBIN, WISE and WALLER

S. Printer's No. 177—S. Read the first time February 8, 1977.

THE COMMITTEE ON MEDICAL AFFAIRS

To whom was referred a Bill (S. 197), to authorize an adult to make a written directive, etc., respectfully

REPORT:

That they have duly and carefully considered the same, and recommend that the same do pass with the following amendments:

Amend the Bill, as and if amended, by striking Item (f) of Section 3 and inserting:

"(f) 'Terminal Condition' means a condition caused by injury, disease, or illness which, according to reasonable medical judgment, is incurable and will, regardless of the application of life-sustaining

procedures, produce death and where the application of life-sustaining procedures serves only to postpone the moment of death of the patient."

Amend further on line 5 of Section 4 between "marriage" and "and" by inserting "not directly financially responsible for the person's medical care", and by striking the third sentence of Section 4 and inserting: "No more than one witness shall be an employee of a health facility in which the declarant is a patient. In addition, a witness to a directive shall not be the attending physician or one of his employees, or any person who has a claim against any portion of the estate of the declarant upon his decease at the time of the execution of the directive."

Amend Item 4 of Section 4 on line 1 by striking "at least 14 days ago".

Amend further by striking the last sentence in Section 4 and inserting: "Signed in the presence of the undersigned who each declare that they each saw declarant sign the same and that each believes the declarant to be of sound mind and fully capable of understanding the meaning and import of the above; the witnesses further affirm and declare that none of them would be an heir at law of the declarant or is known to be the beneficiary under any existing will of the defendant."

Amend Section 6 by striking Item (1) of Item (a) and inserting:

"(1) By being canceled, obliterated, or otherwise destroyed by the declarant or by some person in his presence and by his direction."

Amend Section 9 by striking Item (b) and inserting:

"(b) If the declarant was a qualified patient prior to executing or reexecuting the directive, the directive shall be conclusively presumed, unless revoked, to be the direction of the patient regarding the withholding or withdrawal of life-sustaining procedures. No physician, and no licensed health professional acting under the direction of a physician, shall be criminally or civilly liable for failing to effectuate the directive of the qualified patient pursuant to this subdivision. A failure by a physician to effectuate the directive of a qualified patient pursuant to this division shall constitute unprofessional conduct if the physician fails or refuses to make reasonable efforts to effect the transfer of the qualified patient to another physician who will effectuate the directive of the qualified patient."

Amend Section 12 by striking Item (a) and inserting:

"(a) Any person who willfully conceals, cancels, obliterates or damages the directive of another without the declarant's consent shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year or both."

Amend Item (b) of Section 12 on lines 6 and 7 by striking "deemed guilty of a felony and, upon conviction, shall be punished as provided in Section 16-52 of the 1962 Code" and inserting "punished according to law".

Amend by adding a new Section 14 to read:

"Section 14. Nothing in this act shall prevent the removal of life-sustaining equipment from a person who has been determined to be legally dead."

Renumber sections to conform.

Amend title to conform.

HYMAN RUBIN, for Committee.

A BILL

To Authorize an Adult to Make a Written Directive Instructing His Physician to Withhold or Withdraw Life-Sustaining Procedures in the Event of a Terminal Condition, and to Provide a Penalty.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act shall be known and may be cited as the Natural Death Act.

SECTION 2. The General Assembly finds that adult persons have the fundamental right to control the decisions relating to the rendering of their own medical care, including the decision to have life-sustaining procedures withheld or withdrawn in instances of a terminal condition.

The General Assembly further finds that modern medical technology has made possible the artificial prolongation of human life beyond natural limits.

The General Assembly further finds that, in the interest of protecting individual autonomy, such prolongation of life for persons with a terminal condition may cause loss of patient dignity and unnecessary pain and suffering, while providing nothing medically necessary or beneficial to the patient.

The General Assembly further finds that there exists considerable uncertainty in the medical and legal professions as to the legality of terminating the use or application of life-sustaining procedures where the patient has voluntarily and in sound mind evidenced a desire that such procedures be withheld or withdrawn.

In recognition of the dignity and privacy which patients have a right to expect, the General Assembly hereby declares that the laws of this State shall recognize the right of an adult person to make a written directive instructing his physician to withhold or withdraw life-sustaining procedures in the event of a terminal condition.

SECTION 3. As used in this act:

(a) "Attending physician" means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

(b) "Directive" means a written document voluntarily executed by the declarant in accordance with the requirements of Section 4 of this act. The directive, or a copy of the directive, shall be made part of the patient's medical records.

(c) "Life-sustaining procedure" means any medical procedure or intervention which utilizes mechanical or other artificial means to sustain, restore, or supplant a vital function, which, when applied to a qualified patient, would serve only to artificially prolong the moment of death and where, in the judgment of the attending physician, death is imminent whether or not such procedures are utilized. "Life-sustaining procedure" shall not include the administration of medication or the performance of any medical procedure deemed necessary to alleviate pain.

(d) "Licensed physician" means an individual licensed under the laws of this State to practice medicine or a medical officer of the Government of the United States while in this State in the performance of his official duties.

(e) "Qualified patient" means a patient diagnosed and certified in writing to be afflicted with a terminal condition by two physicians, one of whom shall be the attending physician, who have personally examined the patient.

(f) "Terminal condition" means an incurable condition caused by injury, disease, or illness, which, regardless of the application of life-sustaining procedures, would, within reasonable medical judgment, produce death, and where the application of life-sustaining

procedures serves only to postpone the moment of death of the patient.

SECTION 4. Any adult person may execute a directive directing the withholding or withdrawal of life-sustaining procedures in a terminal condition. The directive shall be signed by the declarant in the presence of three witnesses not related to the declarant by blood or marriage and who would not be entitled to any portion of the estate of the declarant upon his decease under any will of the declarant then existing or, at the time of the directive, by operation of law then existing. In addition, a witness to a directive shall not be the attending physician, an employee of the attending physician or a health facility in which the declarant is a patient, or any person who has a claim against any portion of the estate of the declarant upon his decease at the time of the execution of the directive. The directive shall be in the following form:

DIRECTIVE TO PHYSICIANS

Directive made this ..... day of ..... (month, year).

I ....., being of sound mind, willfully, and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

1. If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-sustaining procedures would serve only to artificially prolong the moment of my death and where my physician determines that my death is imminent whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.

2. In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this directive shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

3. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy.

4. I have been diagnosed and notified at least 14 days ago as having a terminal condition by ....., M.D., whose address is ..... and whose telephone number is

..... I understand that if I have not filled in the physician's name and address, it shall be presumed that I did not have a terminal condition when I made out this directive.

5. This directive shall have no force or effect five years from the date filled in above.

6. I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

Signed.....

City, Coupnty and State of Residence .....
The declarant has been personally known to me and I believe him or her to be of sound mind.

Witness.....
Witness.....
Witness.....

SECTION 5. A directive shall have no force or effect if the declarant is a patient in a skilled or intermediate care nursing facility at the time the directive is executed unless one of the three witnesses to the directive is an ombudsman as may be designated by the State Commission on Aging for this purpose. The ombudsman shall have the same qualifications as a witness under Section 4.

The intent of this section is to recognize that some patients in skilled or intermediate care nursing facilities may be so insulated from a voluntary decision-making role, by virtue of the custodial nature of their care, as to require special assurance that they are capable of willfully and voluntarily executing a directive.

SECTION 6. (a) A directive may be revoked at any time by the declarant, without regard to his mental state or competency, by any of the following methods:

(1) By being canceled, defaced, obliterated, or burnt, torn, or otherwise destroyed by the declarant or by some person in his presence and by his direction.

(2) By a written revocation of the declarant expressing his intent to revoke, signed and dated by the declarant. Such revocation shall become effective only upon communication to the attending physician by the declarant or by a person acting on behalf of the declarant. The attending physician shall record in the patient's medical record the time and date when he received notification of the written revocation.

(3) By a verbal expression by the declarant of his intent to revoke the directive. Such revocation shall become effective only

upon communication to the attending physician by the declarant or by a person acting on behalf of the declarant. The attending physician shall record in the patient's medical record the time, date, and place of the revocation and the time, date, and place, if different, of when he received notification of the revocation.

(b) There shall be no criminal or civil liability on the part of any person for failure to act upon a revocation made pursuant to this section unless that person has actual knowledge of the revocation.

SECTION 7. A directive shall be effective for five years from the date of execution thereof unless sooner revoked in a manner prescribed in Section 6. Nothing in this act shall be construed to prevent a declarant from reexecuting a directive at any time in accordance with the formalities of Section 4, including reexecution subsequent to a diagnosis of a terminal condition. If the declarant has executed more than one directive, such time shall be determined from the date of execution of the last directive known to the attending physician. If the declarant becomes comatose or is renedered incapable of communicating with the attending physician, the directive shall remain in effect for the duration of the comatose condition or until such time as the declarant's condition renders him or her able to communicate with the attending physician.

SECTION 8. No physician or health facility which, acting in accordance with the requirements of this act, cause the withholding or withdrawal of life-sustaining procedures from a qualified patient, shall be subject to civil liability therefrom. No licensed health professional, acting under the direction of a physician, who participates in the withholding or withdrawal of life-sustaining procedures in accordance with the provisions of this act shall be subject to any civil liability. No physician, or licensed health professional acting under the direction of a physician, who participates in the withholding or withdrawal of life-sustaining procedures in accordance with the provisions of this act shall be guilty of any criminal act or of unprofessional conduct.

SECTION 9. (a) Prior to effecting a withholding or withdrawal of life-sustaining procedures from a qualified patient pursuant to the directive, the attending physician shall determine that the directive complies with Section 4, and, if the patient is mentally competent, that the directive and all steps proposed by the attending physician to be undertaken are in accord with the desires of the qualified patient.

(b) If the declarant was qualified patient at least fourteen days prior to executing or reexecuting the directive, the directive shall

be conclusively presumed, unless revoked, to be the directions of the patient regarding the withholding or withdrawal of life-sustaining procedures. No physician, and no licensed health professional acting under the direction of a physician, shall be criminally or civilly liable for failing to effectuate the directive of the qualified patient pursuant to this subdivision. A failure by a physician to effectuate the directive of a qualified patient pursuant to this division shall constitute unprofessional conduct if the physician refuses to make the necessary arrangements, or fails to take the necessary steps, to effect the transfer of the qualified patient to another physician who will effectuate the directive of the qualified patient.

(c) If the declarant becomes a qualified patient subsequent to executing the directive, and has not subsequently reexecuted the directive, the attending physician may give weight to the directive as evidence of the patient's directions regarding the withholding or withdrawal of life-sustaining procedures and may consider other factors, such as information from the affected family or the nature of the patient's illness, injury, or disease, in determining whether the totality of circumstances known to the attending physician justify effectuating the directive. No physician, and no licensed health professional acting under the direction of a physician, shall be criminally or civilly liable for failing to effectuate the directive of the qualified patient pursuant to this subdivision.

SECTION 10. (a) The withholding or withdrawal of life-sustaining procedures from a qualified patient in accordance with the provisions of this act shall not, for any purpose, constitute a suicide.

(b) The making of a directive pursuant to Section 4 shall not restrict, inhibit, or impair the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(c) No physician, health facility, or other health provider, and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan, shall require any person to execute a directive as a condition for being insured for, or receiving, health care services.

SECTION 11. Nothing in this act shall impair or supersede any legal right or legal responsibility which any person may have to

effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. In such respect the provisions of this act are cumulative.

SECTION 12. (a) Any person who willfully conceals, cancels, defaces, obliterates or damages the directive of another without the declarant's consent shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year or both.

(b) Any person who falsifies or forges the directive of another, or willfully conceals or withholds personal knowledge of a revocation with the intent to cause a withholding or withdrawal of life-sustaining procedures contrary to the wishes of the declarant and thereby causes life-sustaining procedures to be withheld or withdrawn and death thereby hastened shall be deemed guilty of a felony and, upon conviction, shall be punished as provided in Section 16-52 of the 1962 Code.

SECTION 13. Nothing in this act shall be construed to authorize or approve mercy killing, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying as provided in this act.

SECTION 14. This act shall take effect upon approval by the Governor.

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APPENDIX "B"

CALENDAR NO. S. 155

Introduced by SENATORS RUBIN, WISE and WALLER
S. Printer's No. 289—S. Read the first time January 26, 1977.

THE COMMITTEE ON JUDICIARY

To whom was referred a Bill (S. 155), to provide that powers of attorney shall not be terminated, etc., respectfully

REPORT:

That they have duly and carefully considered the same, and recommend that the same do pass with the following amendments:

Amend the Bill, as and if amended, by striking Section 1 in its entirety and inserting:

"Section 1. Whenever a principal designates another his attorney in fact by a power of attorney in writing and the writing contains

the words 'This power of attorney shall not be affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing his own estate' showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his physical disability or mental incompetence, the authority of the attorney in fact is exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or mental incompetence of the principal. All acts done by the attorney in fact pursuant to the power during any period of disability or mental incompetence shall have the same effect and inure to the benefit of and bind the principal or his heirs, devisees, legatees and personal representative as if the principal were mentally competent and not disabled. The attorney in fact shall have a fiduciary relationship with the principal and shall be accountable and responsible as a fiduciary. The appointment of a power of attorney under this act shall not prevent a person or his representative from applying to the court and having a committee appointed after which the power of attorney shall become inoperative.

Appendix "C"

Summary of Legislation and Recommendations Previously Recommended by the Study Committee on Aging Which Have Been Implemented

Homestead Tax Exemption

Homeowners who are 65 or older and have resided in the State for at least one year receive the benefits of a homestead tax exemption which provides that the first $10,000 of the fair market value of the dwelling place shall be exempt from county, school and special assessment real estate property taxes. Counties are reimbursed by the State for losses they incur by reason of granting the exemption. Annual reapplication can be made by mail.

Regulation of Nursing Homes

Nursing homes at all levels of care are strictly regulated and inspected by designated State agencies. In addition, the S. C. Commission on Aging staff includes Nursing Home Ombudsmen who receive complaints or reports concerning patient care and who investigate and seek to resolve any problems that may appear. Skilled nursing homes, intermediate care facilities and residential care facilities are now required to provide an item-by-item billing of all charges for all services to the patient or person paying the bill, on request.

Cost-of-Living Increases in Retirement Benefits

Teachers, State employees and other public workers covered by the

South Carolina Retirement System receive automatic increases in benefits when cost-of-living rises (not to exceed four percent).

Fitting and Selling of Hearing Aids Regulated

South Carolina statutes govern the licensing of persons who fit and sell hearing aids, and regulate the manner in which they conduct their business.

Establishment of State Housing Authority

A State Housing Authority has been established. Its purpose, among others, is to encourage the growth of specialized housing for the elderly.

Tax Exemption for Nonprofit Housing for the Elderly

Private, nonprofit organizations are exempt from real estate taxes on property used as specialized housing for the elderly.

State Agency on Aging Given Commission Status

The Interagency Council on Aging has been reorganized and designated as the Commission on Aging.

Establishment of Hypertension Screening Clinics

The Department of Health and Environmental Control has established a network of Hypertension Screening and Treatment Clinics throughout the State to detect and treat hypertension (high blood pressure). This condition, often symptomless, occurs more than twice as often among people aged 65-80 than in the population as a whole.

Free Tuition for Elderly South Carolinans at State Educational Institutions

State-supported colleges, universities and technical schools may now permit South Carolina residents at least 65 years of age to attend classes on a space available basis without payment of tuition.

Adult Abuse and Protection Act

An Act has been enacted into law to prohibit the abuse, neglect or exploitation of a senile or developmentally disabled person and to provide protective services for such a person.

Retirement After 30 Years of Service

Members of the South Carolina State Retirement System may now retire at 65 years of age or after 30 years of service.

Removal of Reference to Age as a Qualification to Serve on a Jury

The South Carolina Code has been amended to eliminate a reference to age as a qualification to serve on a jury.

Creation of a Long-Term Care Division

A Long-Term Care Division has now been established within the S. C. Department of Mental Health and is under the direction of a deputy commissioner.

Allowance of Reciprocal Agreements Between States Regarding Retirement Income

South Carolina can now enter into a reciprocal agreement with another state to refrain from taxing retirement income.

Establishment of a Monetary Penalty System for Health Care Facilities

A monetary penalty system has now been established for violation of licensing standards in hospitals, nursing homes and intermediate care facilities.

Establishment of Licensing Authority for Adult Day Care Facilities

The licensing authority for adult day care facilities has now been established under the Department of Health and Environmental Control.

Establishment of the Community Education Advisory Council

The Community Education Advisory Council has now been established to promote and coordinate the utilization of school and other community facilities for the needs of the community.

Establishment of Retirement and Pre-Retirement Advisory Board

A Retirement and Pre-Retirement Advisory Board has been established to review retirement and pre-retirement programs and policies, propose recommendations and identify major issues for consideration. Two of the members of the eight-member Board shall be retired.

Exemption from Sales Tax on Prescription Drugs and Prosthetic Devices

A South Carolina resident certifying that his age is 50 or older does not have to pay the 4% state sales tax on prescription drugs or prosthetic devices. This tax is eliminated at the point of sale. (*Note:* In 1976, the state sales tax on prescription drugs was repealed.)

Half-Price Admission to Certain State Park Facilities

South Carolinians aged 65 or older are granted half-price admission to state park facilities for which a charge is customarily made (except cabin rentals).

Free Hunting and Fishing Licenses

Residents of South Carolina for three years who are 65 or older are eligible for free hunting or fishing licenses from the Department of Wildlife and Marine Resources.